IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

THE SAUNDERS GROUP, an Oregon limited liability company, Plaintiff, v. **KRISTIN HILDEBRAND**, an individual, **RYAN HILDEBRAND**, an individual, **GABRIELLE HARRIS**, an individual, and **HARRIS EXCAVATION, INC.**, an Oregon Corporation, Defendants.	Case No.: 24CV41934 **DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS (ORCP 21 B)** (Request for Oral Argument)

UTCR 5.050 CERTIFICATION

Time requested for oral argument:	1 Hour
Telephonic argument requested:	No
Offices more than 25 miles from court:	Yes
Court Reporting Services Requested:	Yes

UTCR 5.010 COMPLIANCE

Pursuant to UTCR 5.010, counsel for Defendants Kristin Hildebrand, Ryan Hildebrand, Gabrielle Harris and Harris Excavation, Inc. certifies that counsel for the parties made good faith efforts through telephone calls to resolve the issues in this motion, but they were unable to do so.

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MOTION

Pursuant to ORCP 21 B, Defendants Ryan Hildebrand, Kristin Hildebrand, Gabrielle Harris, and Harris Excavation, Inc. respectfully move for judgment on the pleadings against the claims of Plaintiff the Saunders Group, LLC. The pleadings and attached exhibits demonstrate that Defendants are entitled to judgment as a matter of law.

Plaintiff's claims rest entirely on the assertion that it acquired a right to use a quarry located on the Hildebrand Defendants' property through a quitclaim deed executed in 2024 by Robert Osborne. *See* Compl. ¶¶ 21, 23. Plaintiff alleges that the 2024 deed conveyed a "profit a prendre," a type of easement entitling the holder to sever raw material from land, over approximately five acres of the Hildebrand Defendants' property. For that to be true, Mr. Osborne obviously must have possessed the Profit in 2024 to transfer it to Plaintiff. However, Exhibit I to Plaintiff's Complaint is a 1984 deed showing that Mr. Osborne transferred the Profit four decades before the 2024 quitclaim deed.

Defendants are entitled to judgment on the pleadings on Plaintiff's claims for Declaratory Relief, Interference with Easement, and Injunctive Relief, because each claim depends on Plaintiff's incorrect position that Mr. Osborne still had the Profit in 2024.

POINTS AND AUTHORITIES.

I. INTRODUCTION AND FACTUAL BACKGROUND.

The central question is whether Plaintiff acquired a right to operate a quarry on the Hildebrand Defendants' property through a 2024 quitclaim deed. The pleadings and exhibits attached to Plaintiff's Complaint demonstrate conclusively that Plaintiff did not,

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because the grantor had transferred the Profit to a company under a comprehensive deed in 1984. Defendants raised this issue in their Sixth Affirmative Defense, and Plaintiff failed to allege any facts in response to avoid a judgment on the pleadings.

Defendants Ryan and Kristin Hildebrand own property southeast of Newberg. A portion of that property referred to here as the Disputed Area has been used on and off as a quarry for decades. Plaintiff operates a reclamation facility on the neighboring parcel. Reclamation is the act of filling in a quarry as required by Oregon law. The operator charges customers a fee to dump fill from construction projects into the quarry. Defendants Gabrielle Harris and Harris Excavation, Inc. wish to operate a reclamation facility on the Disputed Area.

The dispute in this case arises from Plaintiff's claim that a 2024 quit claim deed executed by the former owner of the property, Robert Osborne, transferred a "profit a prende" ("the Profit") giving Plaintiff the right to use the Disputed Area for quarry and reclamation activities. Compl. ¶ 11 & 33 (alleging that the Robert Osborne quitclaim deed included "an assignment of the Profit to Saunders."). A profit a prendre is a nonpossessory right to enter another's property to take something from it, such as gravel. *Jackson County v. Compton*, 289 Or 21, 24 (1980). Profits operate much like easements. Mr. Osborne signed the quitclaim deed after Defendants began contesting Plaintiff's right to use the disputed area. *Compare* Ex. T (March 2024 letter from counsel for Plaintiff predating the May 2024 quitclaim deed asserting a right to use the Disputed Area) *and* Compl. ¶ 33 (alleging that Plaintiff only acquired the right in May of 2024 via the quitclaim deed).

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The pleadings and incorporated documents reveal that, if the Profit was transferable, Mr. Osborne transferred it decades ago in 1984. Two documents attached to Plaintiff's Complaint, Exhibits G and I to the Complaint, prove that to be true. Exhibit G is a 1983 land sale contract between Robert Osborne and the Hildebrands' predecessors Fred and Joan Mickelson creating the alleged Profit. Exhibit I is Robert Osborne's 1984 assignment of **all** his contract and property rights in the Disputed Area to a company called Quadco Rock & Paving, Inc ("Quadco") showing that, if a Profit like the one Plaintiff claims existed, Mr. Osborne transferred it away over four decades ago. All Exhibits referenced herein are Exhibits to and incorporated in Plaintiff's Complaint.

If Mr. Osborne transferred his Profit to Quadco in 1984, Plaintiff's claims fail because he no longer had any right to transfer in 2024 when he signed the quitclaim deed. Consistent with that reality, the exhibits attached to Plaintiff's Complaint also show that the Hildebrands eventually acquired full title without any restriction. In that regard, in 1986, Quadco transferred all its interest in the property, including the 1983 contract giving rise to the alleged Profit, to Gerald and Janith Gleaves. *See* Ex. M. The Gleaves then signed a warranty deed (warranting there were no encumbrances other than those specified) to Joan and Fred Mickelson as required by the 1983 Contract. Ex. N. Under Oregon law, that warranty deed merged and extinguished all obligations under the 1983 contract, including the alleged Profit. *Winn v. Taylor,* 98 Or 556, 578 (1921) (quoting Devlin on Real Estate (3d Ed.) vol. 2, § 850a) ("'No rule of law is better settled than that where a deed has been executed and accepted as performance of an executory contract to convey real estate, the contract is functus officio, and the rights of the parties rest thereafter solely on the deed.'"); *see also Johnston v. Lindsay*, 206 Or 243, 248–49

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(1956). The Mickelsons then eventually transferred the property to their own trust, and then by statutory warranty deed to the Hildebrands, again not reserving any Profit. *See* Ex. Q.

For the sake of this motion, Defendants accept as true Plaintiff's allegation regarding the nature, scope, and transferability of the Profit. Defendants vigorously dispute those points and will address them fully with the benefit of discovery on a motion for summary judgment or at trial if necessary.

II. LEGAL STANDARD.

A motion for judgment on the pleadings under ORCP 21 B may be filed after the pleadings are closed, provided it is timely and does not delay trial. ORCP 21 B. The Court must grant the motion when the pleadings affirmatively show that a party seeking relief has no claim, or when a party against whom a claim has been stated affirmatively alleges a complete defense that is admitted or uncontroverted. *Rexius Forest By-Products, Inc. v. A&R Lumber Sales, Inc.*, 112 Or App 114, 117 (1992).

In ruling on a motion, courts may review the contents of the pleadings themselves, plus any documents Plaintiff has attached to the Complaint. *See Thompson v. Tel. & Data Sys., Inc.*, 132 Or App. 103, 105-06 (1994).

III. ARGUMENT.

A. Mr. Osborne had No Profit to Transfer in 2024, because He Transferred All His Interest in the Disputed Area to Quadco in 1984.

The pleadings and incorporated documents demonstrate that Mr. Osborne transferred **all** his rights in the Disputed Area to a company called Quadco in 1984, four decades before executing the quitclaim deed to Plaintiff that serves as the basis of

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Plaintiff's claims. Ex. I is a deed transferring all of Mr. Osborne's property rights in the Disputed Area and all his rights under the 1983 Contract attached as Ex. G to Plaintiff's Complaint.

Under Oregon law, "[a]ny conveyance of real property passes all the estate of the grantor, unless the intent to pass a lesser estate appears by express terms, or is necessarily implied in the terms of the grant." ORS 93.120. The Court of Appeals has interpreted ORS 93.120 to mean that "[a] conveyance presumably passes the entire interest of the grantor." *Wiser v. Elliott,* 228 Or App 489, n. 4 (2009). Here, Osborne transferred the Property without expressly or impliedly reserving the alleged Profit. As a matter of law, any Profit transferred to Quadco.

Beyond that straightforward application of Oregon statute, two specific portions of the Bargain and Sale Deed reveal that Mr. Osborne transferred all his interests in the Disputed Area to Quadco without reservation. *See* ORS 93.860(2) (stating that a bargain and sale deed coneys the "entire interest in the described property which the deed purports to convey.")

First, the deed contains comprehensive language transferring the property, stating that Mr. Osborne "does hereby grant, bargain, sell and convey unto Quadco Rock & Paving, Inc., hereinafter called grantee, **all** of that certain real property with the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining . . . ." Compl. ¶ 23 & Ex. I (emphasis added). That comprehensive language conveyed all possessory and nonpossessory interests in the property without any limitation. By including "tenements, hereditaments, and appurtenances" within the granting language, the deed's language left no doubt that it included the physical property

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itself and nonpossessory rights, ensuring Quadco received complete and comprehensive ownership. Incorporeal hereditaments are intangible rights in land. Hereditament, BLACK'S LAW DICTIONARY (12th ed. 2024). Under Oregon law, a profit a prendre (aka "profit") is defined as an incorporeal interest. *Sproul v. Gilbert*, 226 Or 392, 423 (1961) (characterizing an easement or profit as "a mere incorporeal interest"). Thus, the transfer from Osborne to Quadco included all non-possessory interests, including the alleged Profit.

Second, the deed also states that "by virtue of this conveyance, grantor does hereby assign and transfer **all** of grantor's vendor's interest in the two Mickelson contracts identified above." *See* Ex. I, page 3 (emphasis added). It is that 1983 contract, which was recorded in the County records, that Plaintiff claims created Osborne's Profit. By transferring all his interests as vendor in the Contract, Mr. Osborne unambiguously transferred any Profit to Quadco. Nowhere did Mr. Osborne reserve the Profit. To the contrary, the language in the deed makes it abundantly clear that he intended to transfer all his rights, property or contract, to Quadco.

Thus, if the Profit was transferrable (which must be the case for Plaintiff to have any claim at all), Mr. Osborne conveyed it under the Bargain and Sale Deed in 1984 to Quadco and could not have transferred it to Plaintiff in 2024. Plaintiff's claims fail on that basis, and Defendants are entitled to judgment on the pleadings.

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IV. CONCLUSION.

For the reasons set forth above, Defendants respectfully request that the Court grant their Motion for Judgment on the Pleadings and dismiss Plaintiff's claims.

DATED this 26th day of November 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of November 2025, I served the foregoing **DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS** on the following:

Craig G. Russillo
Mario E. Delegato
Amanda Kohls
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Attorneys for Plaintiff

by the following indicated method(s):

☒ by **mailing** a true and correct copy thereof in a sealed first-class postage prepaid envelope, addressed to the foregoing attorney at the last known office address of the attorney, and deposited with the United States Post Office at Portland, Oregon on the date set forth above.

☒ by **emailing** a courtesy copy to the attorney listed above at the foregoing attorney's last known email addresses on the date set forth above.

☐ by sending a full, true and correct copy thereof via **overnight mail** in a sealed, prepaid envelope, addressed to the attorney as shown above on the date set forth above.

☒ by transmitting full, true and correct copies thereof to the attorneys through the court's e-filing system [UTCR 21.100] on the date set forth above.

By: *s/ Christopher Griffith*
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